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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,750	07/06/2006	Daniel Jonathan Rosen	45694-219947	1634

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EXAMINER

HAMILTON, LALITA M

ART UNIT	PAPER NUMBER
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3691

MAIL DATE	DELIVERY MODE
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03/17/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/561,750	Applicant(s) ROSEN ET AL.	
	Examiner Lalita M. Hamilton	Art Unit 3691	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-19 and 27-28 recite a method. Based on Supreme Court precedent, a proper process must be tied to another statutory class or transform underlying subject matter to a different state or thing (*Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780,787-88 (1876)). Since neither of these requirements is met by the claim, the method is not considered a patent eligible process under 35 U.S.C. 101. To qualify as a statutory process, the claim should positively recite the other statutory class to which it is tied, for example by identifying the apparatus that accomplished the method steps or positively reciting the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Claims 20-21, 24, and 26 recite a system. The system claim must include hardware limitations to be considered statutory.

Claims 22-23 recite a medium. The medium must be at tangible medium executed by a computer.

Claim Rejections - 35 USC § 102

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Zimmerman (2003/0177055).

Zimmerman discloses a method and corresponding system and medium for marketing comprising predicting a decision, simulating a risk environment for one or more control groups, exposing one or more experimental groups to an intervention, and simulating the risk environment for the one or more experimental groups (para.17-22, 27-29, 33-37, and fig.2); constructing a first model of a relationship between the intervention and a perception, constructing a second model of a relationship between the perception and a decision, calibrating the first and second models using a set of real world data, and predicting the decision using the first and second models (para.17-22, 27-29, 33-37, and fig.2); simulating a risk environment further comprises: questioning a subject on one or more relevant factors, offering to the subject a plurality of choices for the decision, offering to the subject an incentive, and recording a selected choice made by the subject (para.17-22, 27-29, 33-37, and fig.2); simulating a risk environment for one or more control groups further comprises: determining whether a set of experimental data for a first control group sufficiently matches a set of real world data,

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and if not, (a) adjusting one or more design parameters for a second control group, and (b) simulating the risk environment for the second control group (para.17-22, 27-29, 33-37, and fig.2); one or more design parameters comprise the incentive (para.17-22, 27-29, 33-37, and fig.2); the one or more design parameters comprise at least a portion of the plurality of choices (para.17-22, 27-29, 33-37, and fig.2); the plurality of choices having a set of orthogonal characteristics, wherein the step of adjusting further comprises: conjointly analyzing the set of experimental data with the set of orthogonal characteristics (para.17-22, 27-29, 33-37, and fig.2); the plurality of choices comprises at least one product choice and a non-selection choice (para.17-22, 27-29, 33-37, and fig.2); providing an item of value to a subject, and wherein the incentive comprises: a risk of losing at least a portion of the item of value, and a reward of a further item of value (para.17-22, 27-29, 33-37, and fig.2); the item of value comprises money (para.17-22, 27-29, 33-37, and fig.2); providing a period of time to a subject, wherein the incentive comprises: a benefit associated with the selected choice, a cost associated with the selected choice, the cost comprising at least a portion of the period of time, and an opportunity cost comprising a lost benefit associated with one or more non-selected choices (para.17-22, 27-29, 33-37, and fig.2); questioning the subject on one or more diversionary factors, falsely describing a profile associated with the diversionary factors, falsely describing a contingency of the incentive upon a match between the selected choice and an objective choice associated with the profile (para.17-22, 27-29, 33-37, and fig.2); calibrating the risk environment (para.17-22, 27-29, 33-37, and fig.2); decision relates to a financial transaction (para.17-22, 27-29, 33-

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37, and fig.2); decision relates to a consumer purchase (para.17-22, 27-29, 33-37, and fig.2); providing a simulated risk environment to one or more control groups, calibrating the simulated risk environment against a set of real world data, providing an intervention to one or more experimental groups, providing the simulated risk environment to the one or more experimental groups, modeling a relationship between the intervention and a perception, modeling a relationship between the perception and a decision, calibrating one or more models against the set of real world data, and obtaining one or more predictions using the one or more models (para.17-22, 27-29, 33-37, and fig.2); and voting (para.17-22, 27-29, 33-37, and fig.2).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lalita M. Hamilton whose telephone number is (571) 272-6743. The examiner can normally be reached on Tuesday-Thursday (6:30-2:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kalinowski Alexander can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lalita M Hamilton/
Primary Examiner, Art Unit 3691